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**IN THE DISTRICT COURT FOR THE  
THE NORTHERN MARIANA ISLANDS**

JOHN BRADY BARRINEAU,

Plaintiff,

vs.

PRO MARINE TECHNOLOGY and  
CABRAS MARINE CORPORATION,

Defendants.

CABRAS MARINE CORPORATION,

Cross-Claim Plaintiff,

vs.

PROMARINE TECHNOLOGY,

Cross-Claim Defendant.

CIVIL ACTION NO. 05-0028

**REPLY OF PRO MARINE  
TECHNOLOGY IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE  
PLEADINGS OR PARTIAL SUMMARY  
JUDGMENT**

Cross-Claimant Cabras Marine Corporation (hereinafter  
"Cabras") argues persuasively that the rule pertaining to the  
liability of non-settling defendants in an admiralty case, such  
as this one, is not controlled by CNMI law but, rather, by the

1 United States Supreme Court's decision in *McDermott, Inc. v.*  
2 *AmClyde*, 511 U.S. 202, 128 L.Ed.2d 148, 114 S.Ct. 1461 (1994).  
3 After the reviewing the cited authorities, Pro Marine agrees  
4 with this assertion and further submits that, based upon the  
5 *McDermott* case, the motion to dismiss the cross-claim must be  
6 granted and that the Court need not even address the issue of  
7 "good faith".  
8

9 In *McDermott*, the Supreme Court examined various approaches  
10 which could be taken in joint tortfeasor settlement cases and  
11 determined that the proportionate liability approach rather than  
12 the *pro tanto* approach was the proper approach to be applied in  
13 admiralty cases. The Court noted that the *pro tanto* approach  
14 (which is the approach under CNMI law) should not be applied  
15 inasmuch as it was inconsistent with prior Supreme Court  
16 authority which found allocation based on proportionate fault  
17 appropriate in admiralty cases,<sup>1</sup> required ancillary litigation in  
18 connection with the "good faith" issue, and had the risk of  
19 saddling a non-settling defendant with a disproportionate share  
20 of liability. As such, the Supreme Court adopted the  
21 proportionate approach whereby a non-settling party is only  
22 liable for its fair share of the damages as determined by the  
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24  
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<sup>1</sup> *United States v. Reliable Transfer Co.*, 421 U.S. 397, 409, 95 S.Ct. 1708, 1714, L.Ed. 251 (1975).

1 jury regardless of the amount paid by the settling defendant.

2 In essence, under the proportionate approach, it is the  
3 plaintiff, in this case Mr. Barrineau, who bears the risk of  
4 settling with a defendant for less than that defendant's fair  
5 share. For example, if Mr. Barrineau recovers damages of  
6 \$500,000, at trial and Cabras is found to be 10% responsible,  
7 Mr. Barrineau will end up with a total recovery of \$150,000,  
8 consisting of the \$100,000 settlement paid by Pro Marine and  
9 \$50,000 to be paid by Cabras representing Cabras' 10% share of  
10 the total jury award. Thus, the payment to be made by Cabras  
11 after trial will be the same regardless of Pro Marine's  
12 settlement.  
13  
14

15 Cabras argues that dismissing the cross-claim will be  
16 "inequitable" since it may have to pay damages after trial  
17 despite the fact that Pro Marine acknowledges its own negligence  
18 and indicates no knowledge of any fault by Cabras in its  
19 discovery responses. If Cabras is ordered to pay damages, this  
20 will be because the jury disagrees with Pro Marine and finds  
21 facts sufficient to hold Cabras  
22 responsible to some degree for Mr. Barrineau's injury. Payment  
23 by Cabras of its fair share of the total damages is hardly  
24 inequitable.  
25  
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By the same token, if the jury verdict indicates that Pro

1 Marine's \$100,000 payment was more than its fair share because  
2 Cabras was primarily at fault, Pro Marine cannot obtain  
3 contribution from Cabras for its overpayment. *Murphy v.*  
4 *Florida Keys Elec. Co-Op Ass'n. Inc.*, 329 F.3d 1311, 1315 (11<sup>th</sup>  
5 Cir. 2003).

6  
7 Based upon the United States Supreme Court's decision in  
8 *McDermott, supra.*, Pro Marine respectfully submits that its  
9 motion to dismiss the cross-claim must be granted as a matter of  
10 law. Pursuant to the *McDermott* case, Cabras' liability is  
11 limited to its fair share of the damages, if any, as determined  
12 by the jury at trial. Cabras can never be required to pay Mr.  
13 Barrineau more than its proportionate share of allocated  
14 liability and, as such, no right to contribution, as alleged in  
15 the cross-claim, can ever arise. Judgment on the pleadings or  
16 partial summary

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1 judgment is therefore appropriate as to Cabras' cross-claim  
2 against Pro Marine.

3 **RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of December, 2006.

4  
5 **THOMAS E. CLIFFORD, CNMI BAR NO. F0210**  
6 **ATTORNEY AT LAW**

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10  
11 BY: 

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